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18 DEMOCRATIC UNDERGROUND, LLC, and
19 Defendant DAVID ALLEN

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

19 RIGHTHAVEN LLC, a Nevada limited liability company, Case No. 2:10-cv-01356-RLH (GWF)
20 Plaintiff,
21 v.
22 DEMOCRATIC UNDERGROUND, LLC, a District of
23 Columbia limited-liability company; and DAVID ALLEN,
24 an individual, **DECLARATION OF KURT OPSAHL IN
25 SUPPORT OF DEFENDANTS' MOTION
26 FOR ATTORNEYS' FEES**
27 Defendants.

24 DEMOCRATIC UNDERGROUND, LLC, a District of
25 Columbia limited-liability company,
26 Counterclaimant,
27 v.
28 RIGHTHAVEN LLC, a Nevada limited liability company,
and STEPHENS MEDIA LLC, a Nevada limited-liability
company,
Counterdefendants.

1 I, Kurt Opsahl, declare:

2 1. I am an attorney of record for the plaintiff in this matter and a member in good
3 standing of the State Bar of California, and am admitted to practice before this Court *pro hac*
4 *vice*. I have personal knowledge of the matters stated in this declaration. If called upon to do so,
5 I am competent to testify to all matters set forth herein.

6 2. I am a Senior Staff Attorney at Electronic Frontier Foundation (“EFF”), which is a
7 non-profit corporation organized and existing under the laws of the Commonwealth of
8 Massachusetts with its principal place of business in San Francisco, California. I have been a
9 Senior Staff Attorney at EFF since 2007 and was a Staff Attorney before that, beginning in 2004.

10 3. EFF represents clients without charge in precedent-setting litigation of national
11 importance involving novel and complex issues arising from the intersection of new technology
12 with civil liberties. Nevertheless, EFF attorneys have hourly rates for purposes of cases in which
13 EFF is entitled to attorneys’ fees. These rates are calculated periodically, based upon the
14 prevailing rates for similarly experienced attorneys

15 4. My 2010 hourly rate, which is the hourly rate for purposes of this matter, is \$525
16 per hour. On May 1, 2011, EFF set my rate at \$625 per hour. However, this increased rate is not
17 included in the calculations for this matter.

18 5. These rates are calculated periodically, based upon a survey of the prevailing
19 hourly rates in the San Francisco Bay Area for lawyers of comparable education, expertise, and
20 experience who handle matters of the type involved in this litigation.

21 6. EFF represents Defendant Thomas DiBiase in *Righthaven v. DiBiase*, Case 2:10-
22 cv-01343-RLH-PAL. On October 26, 2011, Judge Roger Hunt granted Mr. DiBiase’s motion for
23 attorneys’ fees, finding “the fees and rates described in these declarations reasonable and
24 necessary.” *Righthaven v. DiBiase*, 2011 WL 5101938, *1 (D. Nev. Oct. 26, 2011). The rates
25 described in those declarations were EFF’s 2010 hourly rates.

26 7. In *Mick Haig Prod. v. Does 1-670*, Case No. 3:10-cv-01900-N, 2012 WL 213701
27 (N.D. Tex. Jan. 24, 2012), Judge David Godbey granted a petition for attorneys’ fees, finding an
28 EFF attorney’s 2011 rate reasonable. *Id.* at *2, n.2. In *Elec. Frontier Foundation v. Office of the*

1 *Director of National Intelligence*, Case No. 07-05278 SI, 2008 WL 2331959 (N.D. Cal. June 4,
2 2008), Judge Susan Illston found reasonable the 2007 hourly rates of EFF's attorneys, and
3 awarded a total of \$51,540.00 in attorneys' fees at those rates. In *Apple v. Does* (Santa Clara
4 Superior Ct., Case No. 1-04-cv-032178), EFF was awarded attorneys' fees in accordance with
5 their lawyers' 2006 and 2007 rates. In *In re Sony BMG CD Technologies Litigation* (S.D.N.Y.
6 Case No 1:05-cv-09575-NRB), EFF attorneys were paid fees at their hourly rates as part of the
7 settlement of the action in June 2006. Further, in *OPG v. Diebold*, 337 F. Supp. 2d 1195 (N.D.
8 Cal. 2004), EFF attorneys were paid fees after a summary judgment victory at the organization's
9 2004 hourly rates.

10 8. In 1997, I received my Juris Doctor degree from the University of California at
11 Berkeley School of Law (Boalt Hall), where I was an editor of both the California Law Review
12 and the Berkeley Technology Law Journal.

13 9. Before joining EFF in 2004, I worked for the law firms of Perkins Coie LLP
14 (1999-2004) and Severson & Werson PC (1997-1998). In addition, I was the Research Fellow to
15 Professor Pamela Samuelson at the University of California at Berkeley, who had a joint
16 appointment at the School of Information Management & Systems and the School of Law (1998-
17 1999). I have authored more than 15 articles for legal publications, and was a co-editor of the
18 *Electronic Media and Privacy Law Handbook* (ISBN 1879650118). In 2007, I received a
19 California Lawyer Attorney of the Year (CLAY) award for Media Law from *California Lawyer*
20 magazine.

21 10. I have litigated in federal court for 15 years, developing extensive experience in
22 copyright litigation while representing defendants in numerous prominent copyright cases
23 including *Kelly v. Arriba Soft Corp.*, 336 F.3d 811 (9th Cir. 2003), *CoStar Group, Inc. v.*
24 *LoopNet, Inc.*, 373 F.3d 544 (4th Cir. 2004) and *MGM Studios, Inc. v. Grokster, Ltd.* 545 U.S.
25 913 (2005).

26 11. After a careful review of my records on the case, I estimate the minimum number
27 of hours I spent on this litigation as no less than 363.50 hours through the end of March 2012. Of
28

1 these hours, 51.25 was work related solely to Stephens Media, 86.50 was work related solely to
2 Righthaven, and 225.75 was work related to both.

3 12. In addition to this time, I have spent numerous hours keeping up with the hundreds
4 of cases that Righthaven filed, reviewing and analyzing Righthaven's arguments, compiling facts
5 about the overall litigation campaign and defending related litigation (*Righthaven v. DiBiase*,
6 2:10-cv-01343-RLH-PAL), and representing Democratic Underground as an amicus in
7 *Righthaven v. Pahrump Life*, 2:10-cv-01575-JCM-PAL. While much of that work was useful to
8 this matter, none of that time is included in the calculation.

9 13. When reviewing EFF's time records, I took a conservative approach concerning
10 the billed hours for which we would seek compensation. I struck or reduced time entries where
11 the work was duplicative or took longer than might have been expected, and where the work was
12 administrative or of a general nature.

13 14. Corynne McSherry is the Intellectual Property Director at EFF, specializing in
14 intellectual property and free speech issues. Ms. McSherry has 10 years of experience in
15 litigation, primarily in intellectual property. Prior to joining EFF, Ms. McSherry was a civil
16 litigator at the law firm of Bingham McCutchen, LLP. Ms. McSherry has a B.A. from the
17 University of California at Santa Cruz, a Ph.D from the University of California at San Diego,
18 and a J.D. from Stanford Law School. While in law school, Ms. McSherry published *Who Owns*
19 *Academic Work?: Battling for Control of Intellectual Property* (Harvard University Press, 2001).

20 15. Ms. McSherry billed 68.75 hours in this matter, reviewing and revising court
21 submissions and participating in strategy conferences regarding those filings. Of these hours,
22 9.50 was work related solely to Stephens Media, 6.50 hours was work related solely to
23 Righthaven, and 52.75 was work related to both.

24 16. Ms. McSherry's hourly rate for 2010 was \$475.00.

25 17. Cindy Cohn is EFF's Legal Director. She is a 1986 graduate of the University of
26 Iowa and a 1989 graduate of the University of Michigan Law School. She has practiced law for
27 over 20 years. In 2001 Ms. Cohn was honored by the Editorial Board of the *Daily Journal* and in
28 1997 Ms. Cohn was named as one of the "Attorneys of the Year" by *California Lawyer*

1 magazine. In 2006 *The National Law Journal* named her one of 100 most influential lawyers in
2 the United States, and in 2007 the *Journal* named her as one of the 50 most influential women
3 lawyers in the United States. In 2010 The Intellectual Property Section of the State Bar of
4 California awarded her its Intellectual Property Vanguard Award and in 2012, Ms. Cohn was
5 awarded the James Madison Freedom of Information Award by the Northern California Chapter
6 of the Society of Professional Journalists.

7 18. Ms. Cohn billed 19.50 hours in this matter, reviewing and revising court
8 submissions and participating in strategy conferences regarding those filings. Of these hours,
9 14.00 hours was work related solely to Righthaven, and 5.50 hours was work related to both.

10 19. Ms. Cohn's hourly rate for 2010 was \$600.00.

11 20. Abigail Phillips was a senior staff attorney at the Electronic Frontier Foundation,
12 where she focused on copyright and online content matters. Before joining EFF, Ms. Phillips was
13 senior legal director for product and copyright at Yahoo! Inc., and prior to that practiced in the
14 technology policy and IP litigation groups of Perkins Coie LLP in San Francisco. Ms. Phillips is a
15 graduate of Stanford Law School and received her undergraduate degree in literature from Yale
16 University. As of December 2011, Ms. Phillips has left EFF's employment.

17 21. Ms. Phillips billed 19.00 hours in this matter, researching, drafting and editing the
18 response to Stephens Media's motion for reconsideration. All of these hours were for work solely
19 related to Stephens Media.

20 22. Ms. Phillips' hourly rate for 2011 was \$500.

21 23. Julie Samuels is a staff attorney at EFF. She has been litigating intellectual
22 property cases for seven years. Before joining EFF, Ms. Samuels was a civil litigator at
23 Sonnenschein Nath & Rosenthal and Loeb & Loeb. Ms. Samuels received her B.A. from the
24 University of Illinois, and her J.D. from the Vanderbilt University Law School. She also has
25 experience as a legislative assistant at the Media Coalition and as an assistant editor for the
26 National Journal Group.

27 24. Ms. Samuels billed 15.25 hours in this matter, reviewing and revising court
28 submissions and researching applicable legal issues. Of these hours, one hour was work related

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1 solely to Stephens Media, 2.75 hours was work related solely to Righthaven, and 11.50 was work
2 related to both.

3 25. Ms. Samuels' hourly rate for 2011 was \$400.

4 26. Other attorneys and staff at the EFF performed valuable functions in furtherance of
5 the case, but their time was not billed. Nonetheless, Defendants have not asked for compensation
6 for other than the core team members described by name above.

7 27. At my 2010 hourly rate, my attorney's fees through March 31, 2012 amount to
8 \$190,837.50. Ms. McSherry's attorney's fees amount to \$32,656.25 through March 31, 2012.
9 Ms. Cohn's attorneys' fees amount to \$11,700.00 through March 31, 2012. Ms. Phillips'
10 attorneys' fees amount to \$9,500.00 through March 31, 2012. Ms. Samuels' attorneys' fees
11 amount to \$6,100.00 through March 31, 2012.

12 28. The total amount of EFF attorney's fees that EFF is seeking is \$250,793.75 for
13 work through March 31, 2012. Of this figure, \$41,318.75 was solely related to Stephens Media,
14 \$58,000.00 was solely related to Righthaven, and \$151,475.00 was for work related to both.

15 29. EFF paid significant costs for the Democratic Underground matter, including *pro*
16 *hac vice* fees, copying, postage, docketing, secretarial work, legal research, service of the counter
17 claim upon Stephens Media, and travel/hotel expenses for attending the hearing on the Order to
18 Show Cause re Sanctions in July 2011. Nevertheless, EFF is not seeking these costs.

19 30. The records for the time that EFF attorneys billed to this matter for which we seek
20 compensation are attached hereto as **Exhibit A**. Pursuant to Local Rule 54-16(c), I have reviewed
21 and edited Exhibit A and am responsible for the billings reflected in that report. Based on my
22 experience, I believe that these time entries are reasonable. This compilation does not charge for
23 matters for which, in the exercise of billing discretion, we have reduced or entirely deleted time
24 entries for the reasons described above. The information contained in **Exhibit A** is true and
25 correct.

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